



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

September 19, 1960

Mr. Jack N. Fant
County Attorney
El Paso County
El Paso, Texas

Opinion No. WW-937

Re: Whether an independent school district may contract for collection of its delinquent taxes without first instructing the County Attorney to file suit for such taxes, under authority of Acts 1955, 54th Leg., ch. 310 (codified as Vernon's Ann.Civ.St., Art. 2802-1).

Dear Mr. Fant:

You ask the opinion of this office on two questions:

- (1) If Canutillo Independent School District of El Paso County, Texas, organized under the General Laws, may contract with a resident attorney of that county to file suits for delinquent taxes due the district, under authority of Acts 1955, 54th Leg., ch. 310, p. 843, H. B. 476 (codified as Vernon's Annotated Civil Statutes, Article 2802-1), without having theretofore instructed the County Attorney of the county to file such suits as provided in Article 7343, Revised Civil Statutes, 1925;
- (2) The type of waiver which should be had from the County Attorney upon his refusal to file such suits in the event the law requires the school district first to instruct him to file such suits and he declines to do so.

House Bill 476, Acts 1955, hereinabove mentioned, reads as follows:

"An Act allowing independent school districts to enter into contracts with any attorney of this State for the collection of delinquent taxes; providing for his compensation; making

this Act cumulative of all other laws;
and declaring an emergency.

"Be it enacted by the Legislature of the
State of Texas:

"Section 1. Any independent school district
of this State may contract with any compe-
tent attorney of this State for the collection
of delinquent taxes of such independent
school district, and he shall receive for
his services not to exceed the same amount
as allowed attorneys collecting delinquent
taxes for the State and county.

"Sec. 2 This Act shall be cumulative of
other laws and shall be construed to
provide an additional method for employment
of attorneys by independent school districts
for the collection of delinquent taxes.

"Sec. 3 The fact that the laws of this
State do not provide an adequate method
for collection of delinquent taxes by
independent school districts creates an
emergency and an imperative public
necessity that the Constitutional Rule
requiring bills to be read on three
several days in each House be suspended,
and this Rule is hereby suspended, and
that this Act take effect and be in force
from and after its passage, and it is so
enacted." (Underscoring added.)

Article 7343, R.C.S., 1925, reads as follows:

"In any incorporated city or town in
which any tracts, lots, outlots or
blocks of land, situated within the
corporate limits of said city or town
have been returned delinquent, or re-
ported sold to said city or town for
the taxes due thereon, the governing
body may prepare or cause to be pre-
pared lists of delinquents in the
same manner as provided in this
chapter, and such lists shall be
certified to as correct by the mayor
of said city or town, if any, and

if said city or town has no mayor, by the presiding officer of the governing body. After said lists have been properly certified to, the governing body of the city may cause lists of delinquents to be published in a newspaper as provided for State and county delinquent taxes in this law. When twenty days from the date of last publication of said list or lists of delinquents has elapsed, the governing body of the city or town may direct the city attorney to file suits for collection of said taxes, or said governing body may employ some other attorney of the county to file suits and the city attorney or other attorney filing said suits shall be entitled to the same fees as allowed the county attorney or district attorney in suits for collection of State and county taxes, to be taxed as costs in the suit. Independent school districts may collect their delinquent taxes as above provided for cities and towns, the school board performing the duties above described for the governing body of cities, and the president of the school board performing the duties above prescribed for the mayor or other presiding officer. The school board may, when the delinquent tax lists and records are properly prepared and ready for suits to be filed, instruct the county attorney to file said suits. If the school board instructs the county attorney to file said suits and he fails or refuses to do so within sixty days the school board may employ some other attorney of the county to file suit. The county attorney, or other attorney, filing tax suits for independent school districts, shall be entitled to the same fees as provided by law in suits for State and county taxes. No other county officer shall receive any fees unless services are actually performed, and in that event

he shall only receive such fees as are now allowed him by law for similar services in civil suits. The employment of an attorney to file suit for taxes for cities, towns or independent school districts shall authorize said attorney to file said suits, swear to the petitions and perform such other acts as are necessary in the collection of said taxes.

"All laws of this State for the purpose of collecting delinquent State and county taxes are by this law made available for, and when invoked shall be applied to, the collection of delinquent taxes of cities and towns and independent school districts in so far as such laws are applicable."

It is our opinion that Canutillo Independent School District may, under authority of Acts 1955, ch. 310, hereinabove set forth, contract with any competent attorney of this State for the collection of its delinquent taxes without first having instructed the County Attorney of El Paso County to file such suits.

We believe that the above Act of 1955 clearly evidences the intent of the Legislature to provide an additional, cumulative and complete method for employment of attorneys for collection of these taxes and that the Act accomplishes that purpose. The school district is free to choose whether it shall proceed under Article 7343 or under Article 2802-1.

"A cumulative remedy is a remedy created by statute in addition to one which still remains in force; and when a statute gives a new remedy, and contains no negative, express or implied, of the old remedy, the new one provided is cumulative, and the party may elect between the two." Bowles v. Neeley, 28 Okla. 556, 115 Pac. 344, 346 (Okla. Sup. 1911). See also Vol. 10, Words and Phrases, Perm. Ed., "Cumulative Remedy", p. 662.

Of course, prior contract rights, if any, of the regular collector of the school district under Articles 2791 and 2792, R.C.S., must be respected in any contract with an attorney, whether the school district proceeds under Article 7343 or Article 2802-1.

Should the school district elect to contract under Article 2802-1 then under the clear provisions of that Article it may contract with any competent attorney of its choice without first calling upon the County Attorney to represent it. For the same reason, and in this event, the County Attorney is released from his duty and right under Article 7343 to represent the district in such collections and no waiver or release from him is necessary.

What we have said obviates the necessity of our answering your second question.


S U M M A R Y

An independent school district may elect to proceed under either Art. 2802-1, V.C.S., or Art. 7343, R.C.S., for collection of its delinquent taxes.

Under Art. 2802-1 there is no requirement to first instruct the County Attorney to file suits nor to secure from him a waiver or release before contracting with any competent attorney of Texas of the school district's choice for collection of its taxes.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
W. E. Allen
Assistant

WEA:cm

APPROVED:

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